

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

February 9, 2024

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Ref No. 24OD-006

OAHU

(1) Consent to Assign Grant of Non-Exclusive Easement No. S-5739 Kenneth D. Simon, Assignor to Damian Warzecha and Jessica Warzecha, Assignees; (2) Amend the Easement Conditions regarding Consent to Assignment and Insurance Provision; Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-6-001:006 seaward.

APPLICANT:

Damian Warzecha and Jessica Warzecha, husband and wife, as tenants by the entirety.

LEGAL REFERENCE:

Section 171-6, 36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Kaneohe, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-6-001:006 seaward, as shown on **Exhibit A1** and **A2**.

AREA:

819 square feet, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CHARACTER OF USE:

Right, privilege and authority to use, repair and maintain seawall and fill land.

TERM OF EASEMENT:

Fifty (55) years, commencing on April 11, 2005 and expiring on April 10, 2060.

RENTAL:

A one-time payment (\$12,840) was paid when the easement was issued.

CONSIDERATION:

Not applicable as the subject request was triggered by the sale of the abutting private property and there is no information on consideration allocated to the assignment of the subject easement.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020 the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1 that states, “Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing” and Part 1, Item 39 that states, “Creation or termination of easement, covenants, or other rights in structures or land.” The proposed action is a de minimis action that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17 HAR.

DCCA VERIFICATION:

Not applicable as individuals are not required to register with the DCCA.

REMARKS:

At its meeting of December 12, 2003, under agenda item D-44, the Board approved the issuance of Grant of Non-Exclusive Easement S-5739 (“GL5739”) for seawall and fill land purposes to Kenneth D. Simon, who was the owner of the abutting private property further identified as tax map key (1) 4-6-001:006.

Assignment:

In May 2023, Mr. Simon conveyed his property to Mr. & Mrs. Warzecha and an assignment of GL 5739 was subsequently executed between the parties. Pursuant to paragraph 5 of GL 5739 which requires the Board’s written consent to the assignment, staff brings the request seeking the consent on today’s agenda.

Amendment:

The current policy for similar shoreline easements is to make the easement run with the property served by the easement. Therefore, staff recommends the Board authorize the amendment of the easement to allow it to “run with the land” that it serves, specifically the private property identified as tax map key (1) 4-6-001:006.

Insurance:

Paragraph 11 of GL5739 requires the grantee to procure liability and property damage insurance in an amount of at least \$300,000 and \$500,000 respectively. The current insurance requirement for similar shoreline easements is \$1 million per occurrence and \$2 million aggregate. Staff recommends the Board authorize the amendment of the easement by updating the insurance provision with the current requirements.

Staff did not solicit comments from other agencies on the subject request as there is no change in the existing use. The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board

- A. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, Hawaii Revised Statutes and Chapter 11-200.1-15, Hawaii Administrative Rules, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment as a de minimis activity.
- B. Consent to the assignment of Grant of Non-Exclusive Easement S-5739 from Kenneth D. Simon, Assignor, to Damian Warzecha and Jessica Warzecha as Tenants by the Entirety, Assignees, subject to the following:
 1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
 2. Review and approval by the Department of the Attorney General; and
 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- C. Authorize the amendment of Grant of Non-Exclusive Easement S-5739 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 1. Replace paragraph 5 of the subject easement with the following: “The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 4-6-001:006, provided however:

- (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document";
2. Replace paragraph 11 of the subject easement with the current insurance provision;
 3. Review and approval by the Department of the Attorney General; and
 4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Barry Cheung

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District Land Agent

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

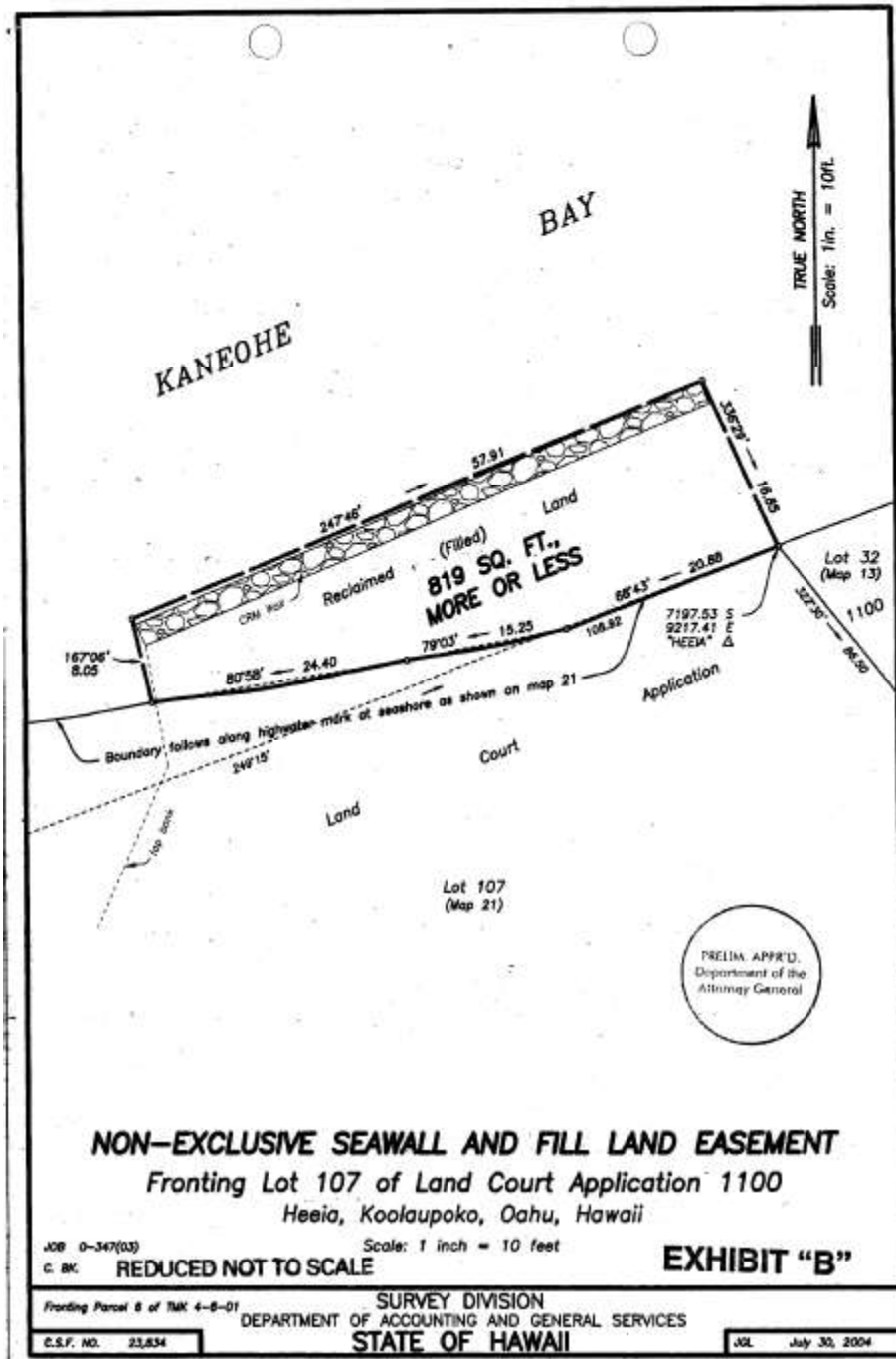
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TMK: (1) 4-6-001:006 seaward

Exhibit A1



TMK: (1) 4-6-001:006 seaward

Exhibit A2